

# **Television New Zealand Amendment Bill**

Government Bill

As reported from the Commerce Committee

## **Commentary**

### **Recommendation**

The Commerce Committee has examined the Television New Zealand Amendment Bill and the majority of us recommend that it be passed with the amendments shown.

### **Introduction**

This bill seeks to amend the Television New Zealand Act 2003 (the Act). It proposes to

- replace the Television New Zealand Charter with a statement of functions, against which Television New Zealand would determine its own priorities
- allow the rescreening of television programmes that were produced before the establishment of the Broadcasting Commission (NZ On Air) in May 1989
- require Television New Zealand (TVNZ) to provide content through various media
- repeal provisions of the Act that are spent.

Our commentary covers the main amendments we recommend to the bill.

### **TVNZ archived works**

Clause 10 would insert new Part 4A into the Act to provide for a scheme to allow TVNZ to re-screen works made before 27 May 1989 by its predecessor corporations, while compensating rights holders. These works have been unavailable for re-screening because of the need to negotiate with multiple contract-holders. While we agree that it is desirable that they be re-screened because of their historic and cultural value, which may be greater than their commercial value, we make a number of recommendations for amending the bill concerning TVNZ archived works.

#### **Definitions**

New section 29A of new Part 4A inserted by clause 10 of the bill sets out the definitions applying in new Part 4A. We recommend an amendment to the definition of “archived work” to make it clear that it would apply only to works for which TVNZ owns the whole copyright; pre-1989 commissioned works and co-productions made for the Broadcasting Commission of New Zealand or its predecessors are excluded from the definition.

We recommend amending the definition of “person with an interest in an archived work” to make it clear that the definition includes a person who was contracted for any one of the categories applicable to persons with an interest in an archived work listed in clause 1 of the new Schedule 3 to be added to the Act. This would ensure that the rights of a person in an archived work were protected. We also recommend that an employee of the Broadcasting Commission or its predecessors be excluded from this definition.

#### **Screening of archived works**

New section 29C of new Part 4A sets out the requirements that TVNZ must meet to re-screen an archived work. We recommend that new section 29C(1) be amended to make it clear that TVNZ could re-screen archived programmes only on the channels it owns at any time and on its on-demand internet site, as TVNZ owns the copyright.

We recommend deleting new section 29C(1)(iv) and inserting new subsection (iv) to make it clear that a programme could be re-screened by a provider of another delivery platform that had an agreement with TVNZ for the supply of that content.

We recommend amending new section 29C(2) to make it clear that an archived work screened under this section must be screened free of charge to the viewer. We believe that archived programmes constitute a public good, so the viewer should bear no cost.

We recommend inserting new section 29C(2)(b)(i) to require that TVNZ not schedule an archived work in prime time on any day of the week on its channels TV1 and TV2. We believe that TVNZ should not generate advertising revenue from these works by screening them during prime viewing hours.

The committee discussed the implications of the wording of new section 29C (2) (b)(i) which referred only to TV1 and TV2. This raised concerns about “future proofing” against other commercial channels emerging from TVNZ and any name change to TV1 or TV2. Some of us will undertake further consideration regarding this issue.

We also recommend inserting new section 29C(2)(b)(ii) to provide that an archived work must not be subject to a license that is sold for profit by TVNZ to be screened on any other platform. Our recommendation would not, however, preclude TVNZ from recovering reasonable costs associated with making these works available.

To avoid doubt, we clarify that the limitations under this clause would not preclude TV1 and TV2 from re-screening archived works during prime-time viewing, subject to negotiations and agreement with rights holders. In these instances the provisions of new Part 4A would not apply.

### **Rights of persons with interest in archived work to cease**

We recommend amending new section 29D(1) to make it clear that the cessation of rights of persons with an interest in archived work would apply only to contractual rights and copyright under the Copyright Act 1994; moral and performers’ rights would remain unaffected. Our recommended amendment would ensure that the bill complied with the international conventions pertaining to these rights: the Berne Convention for the Protection of Literary and Artistic Work and the Agreement on Trade Related Aspects of

Intellectual Property Rights (TRIPS). We believe that moral and performance rights should continue to be recognised.

We recommend inserting new section 29D(1A) to make it clear that the rights of a person in an archived work are not infringed if the work is screened in accordance with proposed new section 29C, and that they are replaced by the rights provided for elsewhere in new Part 4A.

#### **Notices of screening of archived works**

We recommend amending new section 29F(2)(d) to provide that a person with an interest in an archived work would have up to one month to register to participate in the scheme after a work was first screened or made available online. Under the bill as introduced, it could be interpreted that TVNZ could announce a date less than a month away. Our amendment would make it clear that a person with an interest in an archived work would always have a month to register their interest.

#### **Establishment of TVNZ Archived Works Fund**

New section 29G inserted by clause 10 provides for the establishment of the TVNZ Archived Works Fund, from which compensation would be paid for the screening of an archived work. It also prescribes the sum of money the Fund would have to contain for each half hour of an archived programme that was screened.

We disagree with the provision for a set fee for compensatory payments for a re-screened archived work, because not all works are of equal value, or indeed any market value. The proposed compensatory regime might also conflict with New Zealand's international obligations under the Berne Convention and the TRIPS Agreement, under which an author is entitled to equitable remuneration set by an independent competent authority. In the light of this, we recommend a number of amendments to new section 29G, including requiring TVNZ to ensure that the Fund contains a sum that has been determined on the basis of the market value of an archived work that is re-screened.

We recommend inserting new section 29G(3) to require that a chief executive who has responsibility for the administration of the Act, after consultation with TVNZ, must appoint as an assessor an inde-

pendent person with the expertise to assess the market value of an archived work.

We also recommend inserting new section 29G(4) to require that the market value of an archived work be assessed as at the time of its screening under section 29C.

Finally, we recommend requiring that the assessor, when making an assessment of the market value of an archived work, give regard to the uses permitted for the work by this part.

### **Payments from TVNZ Archived Works Fund**

The Schedule proposes adding a new Schedule 3 to the Act that sets out the categories of persons with an interest in an archived work under the scheme, the proportions of the total sum available payable to each category, and the formula for calculating individual payments.

We recommend amending clause 1 of new Schedule 3 to expand the categories applicable to persons with an interest in an archived work under the scheme to include supporting performers, artists, or presenters, and those who hold a right in a work that is incorporated into an archived work. Our proposed amendment would ensure that more of those with an interest in an archived work would receive compensatory payments.

### **Access to archived works**

We have considered the concerns raised by the Māori Television Service regarding access to archival material, particularly news and current affairs footage. TVNZ and the Crown have an agreement which allows the Māori Television Service reasonable access to archival material held by TVNZ, on a cost-recovery basis, for the purposes of making programmes to promote Māori language or culture. We understand that this agreement remains unaffected by the bill.

We have also considered the arguments regarding the cost of accessing news and current affairs archival footage by independent producers. TVNZ has catalogued and archived this content and makes it available to television producers for a price. Independent producers make arrangements to use archive footage in order to produce new works to be licensed and broadcast at the current commercial rate. We do not believe that it is necessary to require TVNZ to make

available news and current affairs archival footage to television producers on a cost-recovery basis.

### **Measuring TVNZ's performance**

Clause 7 would repeal sections 22 and 23 of the Act, which relate to the reporting functions of TVNZ, now covered by the Crown Entities Act 2004. The Crown Entities Act requires TVNZ to provide information on the qualitative and quantitative performance measures to be used for measuring its performance against the Charter in its statement of intent, and to report on them in its annual report.

While we considered recommending requiring TVNZ to report against its statement of functions, the majority of us believe that the statement of intent process, set out in the Crown Entities Act, is the appropriate mechanism for requiring TVNZ to report on its performance.

### **Labour Party minority view**

Labour opposes the TVNZ Amendment Bill on the basis that it replaces the TVNZ Charter in section 12 of the Television New Zealand Act 2003 with a statement of functions.

Labour opposes the removal of the TVNZ Charter. The removal of the charter weakens and essentially destroys TVNZ's role as a public broadcaster because the statement of functions allows TVNZ to consistently put commercial priorities ahead of public broadcasting objectives.

Recent events have shown that TVNZ is currently conflicted in its role as State broadcaster with a responsibility to maintain a set of broadcasting standards and to develop and encourage New Zealand content on our screen and its role as a commercial entity in delivering a dividend to the Government.

We strongly agree with the majority of submitters to the Commerce Committee that the proposed statement of functions is inadequate.

The purpose of the new legislation is to “(a) provide for the functions of TVNZ, the Crown entity responsible for conducting a television and digital media business; and (b) ensure that TVNZ carries out its functions and maintains its commercial performance”.

These clauses replace the Television New Zealand Charter, which state TVNZ had some other obligations as the State broadcaster. It was asked to feature programming across all genres that informed, entertained, and educated New Zealand audiences.

Under the charter, TVNZ was required to feature New Zealand films, drama, comedy, and documentary programmes.

Instead this bill means TVNZ will no longer be required to support and schedule local content or support an independent production industry. Under this legislation we will see a further grinding back of the content that TVNZ provides.

We also believe that by including international content in the statement of functions and omitting reference to programming that meets the needs of special interest groups, that TVNZ will no longer serve a bicultural and diverse society. This point is made by the Human Rights Commission in its submission.

We are also concerned that there will no longer be any requirement for locally made content for children once the charter is removed.

And there is no requirement to measure TVNZ performance against the statement of functions as there is for charter performance.

We have serious concerns that the Government's intentions are to dilute and reduce any requirement for local content development to be delivered to New Zealanders via a Freeview platform and place TVNZ's commercial objectives ahead of its role as a public broadcaster.

For these reasons Labour cannot support this bill.

### **Green Party minority view**

The Green Party opposes the TVNZ Amendment Bill because it strips Television New Zealand of its charter, and its public service obligations and responsibilities.

Stripped of its charter, this bill will turn TVNZ into a nakedly commercial broadcaster, focused solely on chasing ratings and advertising revenue, indistinguishable from any other commercial broadcaster. Once the bill becomes law, TVNZ will exist for the sole purpose of returning a profit and a dividend to the Government.

We can see little point in having a State-owned broadcaster that has no public service functions or responsibilities.

The charter spells out explicitly that TVNZ is expected to be a public service broadcaster, and to screen impartial news and current affairs programmes, along with drama, documentaries, children's programmes, and minority interest programmes.

It also spells out that TVNZ should "promote understanding of the diversity of cultures making up the New Zealand population"—a provision that Paul Henry appears not to have read.

But once this bill becomes law, there will no longer be any obligation on TVNZ to provide impartial news and current affairs, or to screen local programmes, documentaries, children's programmes, drama, or minority programmes.

The Paul Henry debacle was undoubtedly a foretaste of what is come, when all public service values and responsibilities have been removed from TVNZ. It also exposed the folly of requiring a State broadcaster to abandon its public service mandate and focus on chasing ratings instead.

We predict that after this bill is enacted, there will be fewer New Zealand programmes screened, and even less New Zealand content on TVNZ, because it is more expensive to produce New Zealand programmes than it is to import cheap programmes from overseas.

Once this bill is passed, New Zealand will be the only country in the OECD that does not have a public service broadcaster, and one of the only countries without a local content quota. We consider this a disgrace and share SPADA's concern that in the absence of any commitment to local content in the bill, the financial stability of the screen production sector could be seriously eroded.

While the Minister has yet to outline any clear broadcasting strategy on the part of his Government, we assume the agenda behind this bill is to fully commercialise TVNZ and ready it for sale.

We are also concerned that funding for the two non-commercial niche channels which will continue to provide a small amount of public service broadcasting, TV6 and 7, is tenuous and short-term, and ends next year. The funding for Māori Television is not at a sustainable level either. In any event TV6 and 7, and having a dedicated children's/family channel, are no substitute for high quality local content on TV1.

We are also concerned that the overriding of rights to royalties for archival programmes is unfair and without precedent, and is a breach



of our obligations under the Berne convention. It takes away the legitimate contractual rights of interested parties.

Capping any royalty payment at \$300 does not honour the contracts signed between performers and NZBC and later manifestations of national television.

We are also concerned that once the bill has passed TVNZ will own the archive and will be able to charge exorbitant fees for access to pre-1989 material, which will restrict access to historical archival footage and the screening of this footage outside TVNZ.

## **Appendix**

### **Committee process**

The Television New Zealand Amendment Bill was referred to the committee on 29 April 2010. The closing date for submissions was 17 July 2010. We received and considered 55 submissions from interested groups and individuals. We heard 15 submissions. We received advice from the Ministry for Culture and Heritage and Television New Zealand Limited.

### **Committee membership**

Hon Lianne Dalziel (Chairperson)  
John Boscawen (until 8 September 2010)  
Charles Chauvel (until 21 July 2010)  
David Clendon  
Clare Curran  
Hon Sir Roger Douglas (from 8 September 2010)  
Te Ururoa Flavell  
Melissa Lee  
Peseta Sam Lotu-Iiga  
Hon Nanaia Mahuta (from 21 July 2010)  
Katrina Shanks  
Jonathan Young

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Television New Zealand Amendment Bill

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**Key to symbols used in reprinted bill**

**As reported from a select committee**

text inserted unanimously

~~text deleted unanimously~~

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*Hon Dr Jonathan Coleman*

# **Television New Zealand Amendment Bill**

Government Bill

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**Television New Zealand Amendment Bill**

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**The Parliament of New Zealand enacts as follows:**

- 1 Title**  
This Act is the Television New Zealand Amendment Act **2009**.
- 2 Commencement**  
This Act comes into force on the day after the date on which it receives the Royal assent. 5
- 3 Principal Act amended**  
This Act amends the Television New Zealand Act 2003.

**Part 1**  
**Amendments to principal Act** 10

*Amendments relating to functions of TVNZ*

- 4 Purpose of Act**  
Section 3 is amended by repealing paragraphs (a) and (b) and substituting the following paragraphs:
  - “(a) provide for the functions of TVNZ, the Crown entity responsible for conducting a television and digital media business; and 15
  - “(b) ensure that TVNZ carries out its functions and maintains its commercial performance; and
  - “(ba) establish a process that will enable TVNZ to screen, in specified circumstances, programmes made before 27 May 1989 and held in the TVNZ Archive; and”. 20

## 5 Interpretation

- (1) Section 4 is amended by inserting the following definitions in their appropriate alphabetical order:

“**content** means the audio and visual material screened on any delivery platform by TVNZ in carrying out its functions, and includes both text and still pictures 5

“**delivery platform** means any technical method for screening content

“**digital media** means any digital technology by which content is produced and screened 10

“**programme**—

“(a) means sounds or visual images, or a combination of sounds and visual images, intended to—

“(i) inform, enlighten, or entertain:

“(ii) promote the interests of any person: 15

“(iii) promote any product or service; but

“(b) does not include visual images, whether or not combined with sounds, that consist predominantly of alphanumeric text

“**screen** means to make content available on any delivery platform 20

“**services** means any means by which content is compiled and screened”.

- (2) Section 4 is amended by repealing the definition of **TVNZ** and substituting the following definition: 25

“**TVNZ** means the company known as Television New Zealand Limited”.

## 6 New section 12 substituted

Section 12 is repealed and the following section substituted:

“**12 Functions of TVNZ** 30

- “(1) The functions of TVNZ are to be a successful national television and digital media company providing a range of content and services on a choice of delivery platforms and maintaining its commercial performance.

- “(2) In carrying out its functions, TVNZ must provide high-quality content that— 35



- “(a) is relevant to, and enjoyed and valued by, New Zealand audiences; and
- “(b) encompasses both New Zealand and international content and reflects Māori perspectives.
- “(3) TVNZ’s services must include the provision of channels that are free of charge and available to audiences throughout New Zealand.” 5
- 7 Sections 22 and 23 repealed**  
Sections 22 and 23 are repealed.
- 8 Powers of shareholding Ministers** 10
- (1) Section 27 is amended by repealing subsection (1) and substituting the following subsection:
- “(1) The shareholding Ministers may, by written notice to the TVNZ board, determine the amount of dividend to be paid by TVNZ to the Crown in respect of any financial year or years.” 15
- (2) Section 27(3) is amended by omitting “objectives and”.
- 9 Shareholding Ministers must not give certain directions**
- (1) Section 28(1) is amended by repealing paragraphs (a) to (c) and substituting the following paragraphs:
- “(a) any programme or other content; or 20
- “(b) any allegation or complaint relating to a programme or other content; or
- “(c) the gathering or presentation of news or the preparation or presentation of any current affairs programme or content; or 25
- “(d) standards administered under the Broadcasting Act 1989.”
- (2) Section 28(2) is amended by repealing paragraphs (a) to (c) and substituting the following paragraphs:
- “(a) any programme or other content; or 30
- “(b) any allegation or complaint relating to a programme or other content; or
- “(c) the gathering or presentation of news or the preparation or presentation of any current affairs programme or content; or 35

- “(d) the responsibility of TVNZ or any of its subsidiaries for compliance with standards administered under the Broadcasting Act 1989.”
- (3) Section 28 is amended by inserting the following subsection after subsection (2): 5
- “(2A) This section applies regardless of the type of delivery platform TVNZ uses to deliver any programmes or other content.”

*Amendments relating to archived programmes*

**10 New Part 4A inserted**

The following Part is inserted after section 29: 10

**“Part 4A**

**“TVNZ archived works**

**“Subpart 1—Preliminary provisions**

**“29A Interpretation**

In this Part, unless the context otherwise requires,— 15

**“archived work** means a programme made by or on behalf of the Broadcasting Corporation of New Zealand or its predecessors on or at any time before 27 May 1989 and held in the TVNZ Archive, and includes an archived work that comprises a series of episodes 20

**“archived work—**

**“(a) means a programme made by the Broadcasting Corporation of New Zealand or its predecessors—**

**“(i) on or at any time before 27 May 1989; and**

**“(ii) held in the TVNZ Archive; and 25**

**“(iii) in which the TVNZ now holds sole copyright; and**

**“(b) includes an archived work that comprises a series of episodes**

**“chief executive** means the chief executive of the department of State that is, with the authority of the Prime Minister, responsible for the administration of this Act 30

**“episodes** means the series of episodes that make up an archived work

“**Māori Television Service** means the service established by the Māori Television Service (Te Aratuku Whakaata Irirangi Māori) Act 2003

“**Minister** means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Part 5

“**NZ On Screen** means the Internet site established by the charitable trust NZ On Screen Trust to screen content

“**person with an interest in an archived work** means a person contracted to provide services of a kind specified in **clause 4 of Schedule 3** for the purpose of making the work, and includes the estate of such a person 10

“**person with an interest in an archived work—**

“(a) means a person, or the estate of a person,— 15

“(i) contracted for one of the categories listed in **clause 1(a) to (d) of Schedule 3** for the purpose of making an archived work; or

“(ii) who is within the category referred to in **clause 1(e) of Schedule 3**; but 20

“(b) excludes an employee of the Broadcasting Corporation of New Zealand or its predecessors

“**reviewer** means a person appointed as a member of a panel of reviewers under **section 29L** for the purposes of **subpart 4**

“**scheme** means the scheme provided for by **subpart 3** 25

“**screen** has the same meaning as in **section 4**

“**TVNZ Archive** means the archive that is a wholly owned subsidiary of TVNZ

“**TVNZ Archived Works Fund** and **Fund** mean the fund that must be established under **section 29G**. 30

#### “**29B Purpose of this Part**

The purpose of this Part is to enable TVNZ to screen archived works in accordance with the provisions of this Part while also providing a fair and reasonable process to recognise, by compensatory payments made under **subpart 3**, the rights that persons with an interest in an archived work would have had, but for this Part. 35

“Subpart 2—Screening of archived works

“*TVNZ’s right to screen archived works*

“29C Archived works may be screened

“(1) Provided that TVNZ complies with the requirements of this Part, it may— 5

“(a) screen an archived work on as many occasions as it considers appropriate, but only on or by—

~~“(i) its channels TV1 and TV2:~~

“(i) the channels that TVNZ owns at any time:

~~“(ii) digital channels established by TVNZ:~~ 10

“(iii) the TVNZ OnDemand Internet site:

~~“(iv) any other delivery platform with which TVNZ may enter into an agreement for the supply of content:~~

“(iv) agreement between TVNZ and the provider of a delivery platform for the supply of content: 15

“(b) grant the Māori Television Service the right to screen an archived work under any arrangement agreed between that service and TVNZ:

“(c) enter into an arrangement with NZ On Screen in respect of a work that has previously been screened by TVNZ or the Māori Television Service under this section. 20

~~“(2) An archived work must be screened under this section free of charge:~~

“(2) An archived work— 25

“(a) must be screened under this section free of charge to the viewer; but

“(b) must not be—

“(i) screened between the hours of 6 pm and 10.30 pm on any day of the week on channels TV1 and TV2 of TVNZ; or 30

“(ii) subject to a licence that is sold for profit by TVNZ to screen on any other platform (though this is without prejudice to TVNZ recovering its reasonable costs in making the work available for screening on another platform). 35

- “29D Rights of persons with interest in archived work to cease**
- “(1)** Any rights and privileges of a person with an interest in an archived work, whether under contract or under the Copyright Act 1994, cease in relation to the screening of that work under **section 29G**, and the rights of that person are those provided for by this Part. 5
- “(1)** This section applies only to rights in respect of an archived work that are—
- “(a)** contractual rights; or
- “(b)** rights arising under the Copyright Act 1994, other than— 10
- “(i)** moral rights; or
- “(ii)** performers’ rights.
- “(1A)** The rights of a person with an interest in an archived work—
- “(a)** are not infringed if the archived work is screened in accordance with **section 29C**; and 15
- “(b)** are substituted by the rights provided for by the rest of this Part.
- “(2)** ~~However,~~ To avoid doubt, any rights and privileges of a person with an interest in an archived work continue in relation to that work if, and to the extent that, ~~TVNZ screens that~~ that work is screened other than as provided for by **section 29C(2)**. 20

### “Subpart 3—Scheme

#### “*Overview of subpart*

- “29E Overview of scheme under this subpart** 25
- “(1)** In order to promote the purpose of this Part, TVNZ must ensure that—
- “(a)** notices of the screening of archived works are given in accordance with **section 29F**; and
- “(b)** the scheme provided for in this subpart is administered in such a way as to meet the obligations arising under this subpart. 30
- “(2)** The obligations are to—
- “(a)** ensure that the Fund is established and money paid into it, in accordance with **section 29G**; and 35
- “(b)** ensure that the contingency account required by **section 29H** is established and, in a financial year, that a

sum is paid into it that is equal to no less than 10% of the total sum held in the Fund; and

- “(c) assess the entitlement of persons and make payments in accordance with **section 29K**.

*“Notices of screening of archived works”* 5

**“29F Notices advising that archived work to be screened**

- “(1) TVNZ must give public notice advising that an archived work is to be screened and inviting persons with an interest in a specified archived work to register to participate in the scheme.
- “(2) The public notice must include— 10
- “(a) details of the archived work to be screened; and
- “(b) the date on which the work is first to be screened, which must not be earlier than the date that is 4 months after the date of this public notice; and
- “(c) information about the scheme set up under this sub- 15  
part and how a person with an interest in the specified archived work may register to participate in the scheme under **section 29I**; and
- “(d) the date by which a person must register, which ~~must not be later than~~ may be any time up to 1 month after 20  
the date on which—
- “(i) the archived work is first screened; or
- “(ii) if the archived work comprises a series of episodes, the last episode of the series is first 25  
screened.
- “(3) A public notice must be published at least once—
- “(a) on an Internet site or other delivery platform operated by TVNZ; and
- “(b) in each major metropolitan newspaper in New Zealand; 30  
and
- “(c) in any relevant industry or guild publication.
- “(4) TVNZ must also ensure that the information required by **sub-  
section (5)** accompanies—
- “(a) the first screening of an archived work; or
- “(b) the first screening of each episode of an archived work; 35  
or

- “(c) an archived work, in the case of an archived work available for screening on demand, from the time that the work is first available until the date when registration closes, as notified under **subsection (2)(d)**.
- “(5) The information required must advise any person with an interest in the work who has not already registered;— 5
- “(a) of the scheme set up under this subpart; and
- “(b) how to register for the scheme; and
- “(c) of the date by which registration must be made (which must be the date notified under **subsection (2)(d)**). 10

*“Funds that must be established for purposes of scheme*

**“29G TVNZ Archived Works Fund**

- “(1) The TVNZ Archived Works Fund (the **Fund**) must be established for the purposes of the scheme administered under this subpart. 15
- “(2) ~~TVNZ must ensure that at all times the Fund contains, in relation to an archived work, a sum that—~~
- “(a) ~~amounts to \$300 for each half hour for which the archived work is first screened; or~~ 20
- “(b) ~~is prescribed by regulations, being a sum that is the market value of the archived work, having regard to the uses permitted for that work by this Act.~~
- “(2) TVNZ must ensure that at all times the Fund contains, in relation to an archived work to be screened in accordance with **section 29C**, a sum determined on the basis of the market value of that work. 25
- “(3) For the purpose of **subsection (2)**, the chief executive must, after consultation with TVNZ, appoint as an assessor an independent person with the appropriate expertise to assess the market value of an archived work. 30
- “(4) The market value of an archived work that is to be screened in accordance with **section 29C** must be assessed at the time of its screening under that section.
- “(5) In making an assessment of the market value of an archived work, the assessor must have regard to the uses permitted for that work by this Part. 35

**“29H Contingency account**

- “(1) A contingency fund (the **contingency account**) must be established.
- “(2) TVNZ must ensure that, on an annual basis, a sum that is equal to no less than 10% of the total amount held in the Fund in that financial year is paid into the contingency account. 5
- “(3) The contingency account is to be held for the purposes of meeting—
- “(a) any payments required as a result of determinations made by reviewers under **section 29N**; and 10
- “(b) the costs, including the administrative costs, associated with any review conducted under **subpart 4**.

*“Participation in scheme***“29I Registration to participate in scheme**

- “(1) A person with an interest in an archived work in respect of which notices are given under **section 29F** may apply to register to participate in the scheme in relation to that work. 15
- “(2) The application must be made in the prescribed form and manner, and must include evidence—
- “(a) of the person’s interest in accordance with the categories of interest set out in **clause 1 of Schedule 3**; and 20
- “(b) that the person was engaged under a contract with the Broadcasting Corporation of New Zealand or its predecessors before 27 May 1989 to provide services associated with the creation, production, or performance of the relevant archived work; and 25
- “(c) that the person did provide the services to which the contract applied.
- ~~“(3) Persons employed by the Broadcasting Corporation of New Zealand or its predecessors in relation to the archived work are not eligible to register to participate in the scheme. 30~~

**“29J Confirmation of registration**

- “(1) TVNZ must ensure that, as soon as is reasonably practicable after the closing date for registration for an archived work, a determination is made and written notice given to persons who 35



seek to register, advising the person, as appropriate, that the person's registration—

“(a) is accepted and that an assessment will be made in accordance with **section 29K**; or

“(b) is declined and the reasons for that decision. 5

“(2) In the case of a person whose registration is declined, advice must also be given of the right of review of that decision under **subpart 4**, how to apply for review, and the date by which an application must be made (which must be the same as the date notified under **section 29K(4)**). 10

“**29K TVNZ to assess entitlement and make payment from Fund**

“(1) Not later than 20 working days after the closing date for registration in relation to an archived work, TVNZ must assess the entitlement of each person whose registration is accepted under **section 29J(1)(a)**. 15

“(2) Assessments must be calculated—

“(a) on the basis of ~~each person's category of interest under the categories set out in~~ **clause 1 of Schedule 3**; and

“(b) in accordance with the formula set out in **clause 3 of Schedule 3** for determining each person's share of the Fund in relation to the relevant archived work. 20

“(3) TVNZ must notify each person in writing of that person's assessment and make the payment in full accordingly.

“(4) When ~~giving~~ notice is given under **subsection (3)**, advice must also be given of the right of review under **subpart 4**, how to apply for review, and the date by which an application must be made (which must not be later than 20 working days after the date of the notice). 25

“Subpart 4—Review 30

“**29L Review process to be established**

“(1) The chief executive must appoint a panel of reviewers the members of which are to determine applications for review under **section 29M**.

- “(2) Reviewers must be persons who are recognised as experts with the knowledge, experience, and qualifications that are relevant to the review function under this subpart.
- “(3) In carrying out a review, a reviewer must—
- “(a) regulate his or her own procedure; and 5
  - “(b) act judicially.
- “(4) A reviewer may not be held personally liable for any determination made in good faith under this subpart.
- “(5) Reviewers are entitled—
- “(a) to receive remuneration not within **paragraph (b)** for 10  
services as reviewers at a rate and of a kind determined by the chief executive in accordance with the fees framework; and
  - “(b) in accordance with the fees framework, to be reim- 15  
bursed for actual and reasonable travelling and other expenses incurred in carrying out the office of a reviewer.
- “(6) For the purposes of this section, **fees framework** means the framework determined by the Government from time to time for the classification and remuneration of statutory and other 20  
bodies in which the Crown has an interest.

*“Review procedures*

“**29M Application for review**

- “(1) The following persons may apply for review under this sub-  
part:
- “(a) a person whose registration was declined under **section 29J(1)(b)**; or 25
  - “(b) a person who is dissatisfied with an assessment made under **section 29K**.
- “(2) Application must be made—
- “(a) in the prescribed form and manner; and 30
  - “(b) not later than the date notified under **section 29K(4)**.
- “(3) Application for review may be made only on the grounds that TVNZ,—
- “(a) in the case of a person whose registration to participate 35  
in the scheme was declined, failed properly to assess the evidence of that person’s role in the archived work; or

- “(b) in the case of a person who is dissatisfied with an assessment,—
- “(i) attributed the wrong category of interest to that person under **clause 1 of Schedule 3**; or
- “(ii) incorrectly applied the formula set out in **clause 3 of Schedule 3** to determine that person’s share of the Fund in relation to the relevant work. 5
- “(4) An application for review must include all the evidence necessary to establish, as the case may be,— 10
- “(a) why the person’s registration to participate in the scheme ought to have been accepted; or
- “(b) what the applicant alleges is the correct assessment.
- “**29N Determination of application for review**
- “(1) In determining an application for review, a reviewer— 15
- “(a) must take into account all the relevant information that was before TVNZ for the purpose of making a decision under **section 29J** or an assessment under **section 29K**; and
- “(b) may take into account any new evidence that it is satisfied assists with determining whether the person’s registration ought to have been accepted or what the appropriate assessment ought to have been, as the case may be. 20
- “(2) If a reviewer is satisfied that there is no or insufficient evidence on which to change the decision on registration or the assessment by TVNZ, as the case may be, the reviewer must confirm the decision or assessment. 25
- “(3) **Subsection (4)** applies if the reviewer is satisfied—
- “(a) that a person’s registration ought to have been accepted under **section 29J(1)(a)**; or 30
- “(b) that an assessment was not made in accordance with **section 29K(2)**.
- “(4) After taking into account all the relevant circumstances, the reviewer must calculate the assessment in the manner provided for in **section 29K(2)**, as the reviewer determines is reasonable in the circumstances, and remit the matter to TVNZ for payment from the contingency account. 35

“(5) A reviewer must provide a copy of a determination, with reasons, to the applicant and to TVNZ.

“**29O Effect of review decision**

“(1) TVNZ must ensure that the sum (if any) required by the determination of a reviewer is paid to the applicant from the contingency account. 5

“(2) The determination of a reviewer is final.

*“Circumstance in which other relief may be sought*

“**29P Applications from persons unable to register to participate in scheme** 10

“(1) A person may apply under this subpart for review if that person, for reasons beyond his or her control, was unable to register to participate in the scheme until after the close of the period for registration notified under **section 29F**. 15

“(2) An application under this section—

“(a) must be made not later than 2 years after the date of the first notice given under **section 29F(1)** in relation to the relevant archived work; and

“(b) must be made in the form and manner approved for the purpose; and 20

“(c) must include—

“(i) the information required by **section 29I(2)**; and

“(ii) the evidence necessary to establish that the person was unable to register to participate in the scheme in accordance with notice given under **section 29F(1)**. ” 25

“(3) If the reviewer is satisfied that the applicant meets the requirements of **subsections (1) and (2)**, the reviewer must assess the applicant’s entitlement— 30

“(a) on the basis of that person’s category of interest under **clause 1 of Schedule 3**; and

“(b) in accordance with the formula set out in **clause 3 of Schedule 3**.

“(4) After taking into account the particular circumstances of the case, the reviewer must determine the amount to be paid (if 35

any) from the contingency fund in lieu of that person’s participation in the scheme.

“(5) A determination by a reviewer under **subsection (4)** is final.

### “Subpart 5—Miscellaneous

#### “29Q Regulations

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The Governor-General may, by Order in Council, on the recommendation of the Minister and after consultation with TVNZ, make regulations to—

- “(a) provide for other platforms or channels or new methods by which archived works may be made available for public viewing: 10
- “(b) if circumstances so require, add new criteria for any assessment under **section 29K**, or amend or cancel criteria:
- “(c) vary the sum that must be held in the Fund for distribution under the scheme in relation to an archived work: 15
- “(d) add to or amend the categories of interest provided for in **clause 1 of Schedule 3**:
- “(e) vary the proportion of the total sum of money available in relation to an archived work for a category of interest, as set out in **clause 2 of Schedule 3**: 20
- “(f) vary the method of calculating the share of the total sum of money payable to each person with an interest in an archived work, as set out in **clause 3 of Schedule 3**:
- “(g) prescribe forms to be used under **subparts 3 and 4**: 25
- “(h) provide for the procedures to be followed by a reviewer under **subpart 4**:
- “(i) provide for any other matters contemplated by this Part, or necessary for its administration or for giving it full effect. 30

#### “29R Residual funds

If, in any financial year, there is residual money in the Fund or in the contingency account, that money may be applied—

- “(a) to the contingency account for the following financial year; or 35
- “(b) for the maintenance of the TVNZ Archive.

**“29S Review of Part**

“(1) As soon as practicable after the expiry of the period of 2 years from the date of the first notice given under **section 29F**, the chief executive must ensure that a review is commenced and a report prepared that—

“(a) reviews the operation of this Part since the date of its commencement; and

“(b) considers whether any amendments to this Part are necessary or desirable (including an amendment to require further periodic reports).

“(2) Not later than 3 years from the date of the first notice referred to in **subsection (1)**, the chief executive must provide a copy of the report to the Minister who must, as soon as is reasonably practicable, present a copy of the report to the House of Representatives.”

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**11 New Schedule 3 added**

The Schedule 3 set out in the Schedule of this Act is added.

**Part 2****Repeals and related amendments****12 Spent sections of principal Act repealed**

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The following spent sections are repealed:

(a) section 7 (TVNZ ceases to be State enterprise); and

(b) section 8 (transmission business separated from TVNZ); and

(c) section 9 (separation of transmission business implemented by Order in Council); and

(d) section 10 (transitional provision relating to TVNZ ceasing to be State enterprise and separation of transmission business).

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*Amendment to Copyright Act 1994*

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**13 Amendment to Copyright Act 1994**

Section 14 amends the Copyright Act 1994.

**14 New section 57A inserted**

The following section is inserted after section 57:

**“57A Making archived works available for public viewing**

- “(1) The communication of an archived work in accordance with **section 29C** of the Television New Zealand Act 2003 does not infringe copyright (if any) in the archived work under this Act. 5
- “(2) In this section, **archived work** has the same meaning as in ~~section 4~~ **section 29A** of the Television New Zealand Act 2003.” 10
-

**Schedule**  
**New Schedule 3 added**

s 11

**Schedule 3**  
**Payments from TVNZ Archived Works**  
**Fund**

ss 29A, 29I, 29K

5

**1 Categories of interest applicable to persons with interest in archived work**

For the purpose of making an assessment under **section 29K** of a registered person's interest in an archived work, TVNZ must determine, on the evidence provided by that person, which of the following categories of interest ~~apply~~ applies to that person in relation to the archived work:

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(a) creator, writer, producer, or director of the archived work; or

(b) choreographer or composer; or

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(c) leading or solo performer, artist, or presenter; or

~~(d) supporting artist.~~

(d) supporting performer, artist, or presenter; or

(e) a person who has a right in a work incorporated into an archived work.

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**2 Proportion of interests**

The proportion of the interest of a registered person in the total sum of money available in relation to an archived work is to be calculated in accordance with the ~~categories of interest~~ categories in **clause 1** as follows:

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(a) the persons in category (a) share equally in one-half of the total sum available; and

(b) the persons in category (b) share equally in one-sixth of the total sum available; and

(c) the persons in category (c) share equally in one-sixth of the total sum available; and

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(d) the persons in ~~category (d)~~ categories (d) and (e) share equally in one-sixth of the total sum available; ~~and.~~



**3 Calculation of share for each person with interest in archived work**

- (1) TVNZ must calculate the share of the total sum of money payable to each registered person with an interest in an archived work in accordance with the following formula: 5

$$\frac{T \times \$ \times P}{R}$$

where—

T is the duration of the screening of an archived work (in units of 30 minutes)

\$ is the sum (\$NZ) for a 30-minute unit, as provided for by this Act under **section 29G** 10

P is the proportion of interest set out in **clause 2**

R is the number of registered persons in a particular category.

- (2) In this schedule, **registered person** means a person whose registration to participate in the scheme under **subpart 3 of Part 4A** is confirmed, as provided for by **section 29J(1)**. 15

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**Legislative history**

9 December 2009  
29 April 2010

Introduction (Bill 89–1)  
First reading and referral to Commerce Committee

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